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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appn. Number 09/872,914
Appn. Filed 06/01/2001
Applicant Ferdinand Schermerl
Title Tilttable Modular Recycle Container System
Examiner Stephen J. Costellano
Art Unit 3727

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No. Of page including this one: 3

2 pages text
1 page drawing

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the PAPER NO. 17 Office Action mailed 11/05/2002, concerning claim 2 and the combining into claim 1 new matter. Applicant has sent with the RCE a drawing of wheeled container with two attachable containers, one attachable container secured to the top of the first attachable container. This drawing is page 6 of 14 of the provisional patent filed on 06/08/2000 application no. 60/209,964 as pursuant to 35 U.S.C. 119(c)(i) priority claimed in the Patent Application Transmittal Letter, and is identical in concept and structure to the amended fig. 1, showing one wheeled container and two attachable containers. This fig of the provisional patent should positively confirm that the art is not new matter to this application and that a wheeled container with two attachable containers stacked on top of the wheeled container is the art reduced to practice as of 06/08/2000. The original fig. 1 illustrated the forming of the rigid entity (also mentioned in claim 11) for rolling in the tilted position showing the simplest configuration of the invention. The forming of the rigid entity has been the subject matter of the elected specie and is addressed by the claim language in claim 1 and is considered the object of the invention and elected specie. Claim 2 adds duplication of the said attachable container and means for securing, and should be considered duplication of existing matter and procedure of claim 1, but not new matter. Claim 2 is primarily relied upon to narrow the attached location of the attachable containers to being on top of the first said attachable container, as well as their structural configuration relative to each other as being stacked (or piled).

Even if claim 2 were considered canceled, the phrase "at least one" in reference to the attachable container of claim 1, clearly claims one as well as two attachable containers, as the amended fig. 1 illustrates, or three or a plurality of attachable containers. Claim 1 then can by itself support the claim language of claim 2 when claim 1 includes more than one attachable container to be attached. Applicant relies on claim 1 language to support the fig. 1 amendment and two attachable containers.

It is unclear to the applicant what is meant by the "claim language contained in claim 2 of Amendment B filed Sept 12, 2002 as paper No. 10" as this proposed amendment was not allowed and not entered. Claim 2 has not been amended since it's original filing date. For the above reasons the applicant requests the allowance of the fig. 1 amendment and the claim 2 language in the RCE.

1. A modular wheeled container system that is tilted from the free standing position for rolling comprising:

- a) a wheeled container having a means for rolling
- b) at least one attachable container, and
- c) a means for securing adjoining said wheeled container to said attachable container.

2. The system of claim 1 further including a plurality of attachable containers stacked and secured on top of said attachable container.

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Applicant respectfully requests clarification on following if the RCE is still not considered properly filed:

- a) why the proposed but "not allowed" amendment of Amendment B filed Sept 12, 2002 as paper No. 10 is referred to, or relevant
- b) a description of the elected subject matter and it's associated issues
- c) a description of the non-elected subject matter and it's associated issues
- d) a description of the new matter and how and why it is considered new matter
- d) how and why the provisional patent figure sent with the RCE is not considered relevant as the art reduced to practice
- d) and how and why the new matter is not claimed by the claim 1 language "at least one attachable container" and how the language does not include two attachable containers
- e) what specific changes would have to be made in the RCE to make it proper

The mailing date of this Office action was 11/05/2002 and was received on 11/19/2002. The 30 days allowed for response will not allow for any time for a second response if the examiner mails his response to this fax without an additional month for response. Since the communication is limited to written only (paper No. 14) applicant requests that further communication is faxed as soon as possible as well as mailed, and that if an extension of time is not granted that the examiner would fax this or any other communication by 11/27/2002 in order to allow applicant time to meet the 1 month time period and to avoid abandonment.

Applicant pro se


Ferdinand Schermel